

LEGISLATIVE ANALYSIS

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98TH CONGRESS
1ST SESSION

H. R. 860

To amend the Small Business Act and the Small Business Investment Act of 1958.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1983

~~XXXXXXXXXX~~ introduced the following bill; which was referred to the Committee on ~~XXXXXXXXXX~~

A BILL

To amend the Small Business Act and the Small Business Investment Act of 1958.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. ~~Section 101 of the Small Business Act~~ is
4 amended as follows:

5 (a) by striking from paragraph (2) of subsection (q)
6 the figure "\$60,000,000" and by inserting in lieu
7 thereof "\$167,000,000"; and

8 (b) by striking from paragraph (3) of subsection (q)
9 the figure "\$35,000,000" and inserting in lieu thereof
10 "\$41,000,000" and by striking from such paragraph

1 the figure "\$160,000,000" and by inserting in lieu
2 thereof "\$250,000,000".

3 SEC. 2. Section 5 of the Small Business Act is amended
4 by adding the following new subsection:

5 “(f) Notwithstanding any other provision of law, the Ad-
6 ministration shall enter into commitments for direct loans and
7 to guarantee loans, debentures, payment of rentals, or other
8 amounts due under qualified contracts and other types of fi-
9 nancial assistance and to enter commitments to guarantee
10 sureties against loss pursuant to programs under this Act and
11 the Small Business Investment Act of 1958 in the full
12 amounts provided by law, including reprogramming requests
13 approved by the Appropriations Committees of the United
14 States Senate and the House of Representatives of the
15 United States, subject only to (1) the availability of qualified
16 applications for such direct loans and guarantees and (2) limi-
17 tations and amounts contained in authorization and appropri-
18 ation Acts. Nothing in this subsection authorizes the Admin-
19 istration to reduce or limit its authority to enter commitments
20 for direct loans or for such guarantees to qualified appli-
21 cants.”.

22 SEC. 3. Section 404(b) of the Small Business Invest-
23 ment Act of 1958 is amended as follows:

1 (a) by striking from paragraph (1) thereof "may be
2 issued" and by inserting in lieu thereof "shall be
3 issued"; and

4 (b) by striking the period at the end of paragraph
5 (1) thereof and by inserting in lieu thereof ", and the
6 Administration is expressly prohibited from denying
7 such guarantee due to the property being so ac-
8 quired."

9 The provisions of subsections (a) and (b) of this section shall
10 apply to applications (for the issuance of a guarantee de-
11 scribed in section 404 of the Small Business Investment Act
12 of 1958) which are pending as of January 1, 1982, or are
13 made after December 31, 1981.

14 SEC. 4. Section 411 of the Small Business Investment
15 Act of 1958 is amended by adding the following at the end of
16 subsection (h): "The Administration shall not establish eligi-
17 bility criteria based on the amount of the bond, subject to the
18 limitation in subsections (a) and (c), or upon a percentage
19 related to previously successfully completed contracts. The
20 Administration shall evaluate each application on a case-by-
21 case basis and based solely thereon shall determine the ap-
22 propriate guarantee."

23 SEC. 5. Section 7 of the Small Business Act is amended
24 by striking the period at the end of paragraph (4) of subsec-
25 tion (a) thereof and inserting the following: ": *Provided fur-*

1 *ther*, That prior to June 30, 1983, the Administration shall
2 not promulgate, amend, or rescind any rule or regulation
3 with respect to a formula involving prime interest rates as a
4 criteria to determine the maximum interest rate a lender may
5 charge on a deferred participation (guaranteed) loan.”.

6 SEC. 6. Section 10 of the Small Business Act is amend-
7 ed by adding the following new subsection:

8 “(h) The Administration shall maintain a record of all
9 applications for or inquiries about the availability of funding
10 for financial assistance under this Act and for guarantees and
11 purchases under the Small Business Investment Act of 1958.
12 Such record shall include the name, address, and telephone
13 number of the applicant or person inquiring and the dollar
14 amount involved and shall be kept for a period of at least one
15 year from the date of each.”.

16 SEC. 7. Section 5 of the Small Business Act is amended
17 by adding the following new subsection:

18 “(g) The Administration shall notify the Senate Small
19 Business Committee and the Small Business Committee of
20 the United States House of Representatives before repro-
21 graming any program amounts authorized in appropriations
22 Acts or reports explanatory thereof and shall notify the
23 Senate Small Business Committee and the Small Business
24 Committee of the United States House of Representatives
25 before implementing any reorganization of such agency.”.

5

1 SEC. 8. Section 2 of the Small Business Act is amended
2 by striking "section 7(i)" from paragraph (1) of subsection (c)
3 and by inserting "section 7(a)(11)".

4 SEC. 9. Section 7 of the Small Business Act is amended
5 as follows:

6 (a) by striking, wherever it appears therein, "sec-
7 tion 7(i)" from paragraphs (1), (2), (3), (8), (9), and (11)
8 of subsection (j) and by inserting "section 7(a)(11)";

9 (b) by striking from subsection (k) "section 7(i)"
10 and by inserting "section 7(a)(11)";

11 (c) by striking subsections (e), (h), (i), and (l); and

12 (d) by striking all of subsection (c) after the first
13 two sentences in subparagraph (D) of paragraph (4)
14 and inserting the following:

15 "Such loans, subject to the reductions required by subpara-
16 graphs (A) and (B) of paragraph 7(b)(1), shall be in amounts
17 equal to 100 per centum of loss if the applicant is a home-
18 owner and 85 per centum of loss if the applicant is a business
19 or otherwise. The interest rates for loans made under para-
20 graphs 7(b) (1) and (2), as determined pursuant to this para-
21 graph (4), shall be the rate of interest which is in effect on
22 the date the disaster commenced: *Provided*, That no loan
23 under paragraphs 7(b) (1) and (2) shall be made, either direct-
24 ly or in cooperation with banks or other lending institutions
25 through agreements to participate on an immediate or de-

1 ferred (guaranteed) basis, if the total amount outstanding and
2 committed to the borrower under subsection 7(b) would
3 exceed \$500,000 for each disaster unless an applicant consti-
4 tutes a major source of employment in an area suffering a
5 disaster, in which case the Administration, in its discretion,
6 may waive the \$500,000 limitation.”.

7 SEC. 10. Section 7(a) of the Small Business Act is
8 amended by adding the following new paragraph:

9 “(16)(A) No direct loan may be made pursuant to
10 this subsection unless the Administration determines—

11 “(i) that the applicant for such loan (whether
12 a startup or existing small business concern) dem-
13 onstrates a potential for sustained business growth
14 as evidenced by (I) capacity to create, expand, or
15 satisfy domestic or international markets for the
16 products or services produced or rendered by such
17 applicant, (II) location in a geographic area suit-
18 able for its business operations and access to mar-
19 kets, and (III) lack of unduly restrictive agree-
20 ments which, if exercised, could substantially
21 impede the profitable operations of the applicant;

22 “(ii) that the applicant has given reasonable
23 assurance that it will create employment opportu-
24 nities within a two-year period after all loan pro-
25 ceeds are disbursed; and

1 “(iii) those managerial or marketing weak-
2 nesses which exist with respect to such applicant
3 and devises, in concert with the applicant, a man-
4 agement plan, prior to the disbursement of any
5 proceeds of such loan, to address such weakness-
6 es. Such plan, if needed, shall be in writing, pro-
7 vide for identifiable business goals, plans of action
8 and timetables for accomplishment and shall be
9 incorporated by reference into the loan authoriza-
10 tion agreement. The Administration shall provide
11 assistance for the implementation of such plans on
12 a priority basis through such management and
13 technical assistance activities as are authorized by
14 this Act.

15 “(B) Direct loan funds under subsection (a) shall
16 be allocated to the Administration’s regional offices at
17 least quarterly each fiscal year. The amount of such al-
18 location shall be based solely upon the average total
19 number of unemployed workers residing within each
20 regional area as a percentage of the average total un-
21 employed work force nationwide for the immediately
22 preceding fiscal quarter, or for the most recent fiscal
23 quarter for which such statistics are available. Each re-
24 gional office shall allocate such funds to each district
25 office within its jurisdiction at least quarterly based

1 solely upon the average total number of unemployed
2 workers residing within the district as a percentage of
3 the average total unemployed work force regionwide
4 for the immediately preceding fiscal quarter, or for the
5 most recent fiscal quarter for which such statistics are
6 available. During the last fifteen calendar days of each
7 fiscal year quarter the Administration may reallocate
8 direct loan funds among its regions or districts if it is
9 unreasonable to expect that such region or district will
10 commit substantially all of its allocation before the ex-
11 piration of such quarter.

12 “(C) Direct loans authorized by this subsection
13 shall be extended on a priority basis within each of the
14 Administration’s designated district areas to those
15 qualified applicants in order of the following priority—

16 “(i) those applicants which (I) satisfy the re-
17 quirements of subparagraph (A), (II) are located
18 in or near a labor surplus area (as defined pursu-
19 ant to Defense Manpower Policy 4B (32A CFR
20 Chapter 1) or any successor policy), (III) agree to
21 perform or render a substantial proportion of their
22 production or services within or near such areas,
23 and (IV) will utilize the loan proceeds solely for
24 construction, renovation or the purchase of land,
25 buildings, machinery, or equipment;

1 “(ii) those applicants which satisfy the re-
2 quirements of subparagraph (A) and subparagraph
3 (C)(i) (I), (II), and (III); and

4 “(iii) those applicants which satisfy the re-
5 quirements of subparagraph (A).

6 “(D) Neither this paragraph nor the second provi-
7 so of paragraph (3)(A) of subsection (a) shall apply to
8 direct loans made pursuant to paragraph (10) of this
9 subsection.”.

10 SEC. 11. Section 7(a)(3) of the Small Business Act is
11 amended to read as follows:

12 “(3)(A) No loan under this subsection shall be
13 made if the total amount outstanding and committed
14 (by participation or otherwise) to the borrower from the
15 business loan and investment fund established by sec-
16 tion 4(c)(1) of this Act would exceed \$500,000: *Pro-*
17 *vided*, That the Administration’s share of any loan
18 made or effected either directly or in cooperation with
19 banks or other lending institutions through agreements
20 to participate on an immediate basis shall not exceed
21 \$350,000: *Provided further*, That any loan made di-
22 rectly pursuant to this subsection shall be accompanied
23 by an injection of additional funds derived from non-
24 Federal sources in the following amounts:

1 “(i) if the loan is under \$100,000 in amount,
2 at least 10 per centum;

3 “(ii) if the loan is between \$100,000 and
4 \$200,000 in amount, at least 20 per centum; and

5 “(iii) if the loan is over \$200,000 in amount,
6 at least 30 per centum.

7 “(B) The percentages specified in subparagraphs
8 (A) (ii) and (iii) shall be reduced to 10 per centum and
9 15 per centum, respectively, if the non-Federal source
10 funds are derived from a State or local government, in-
11 cluding tax exempt obligations of such governments.

12 “(C) The Administration shall delegate to each
13 district office the authority to approve direct loans in
14 the amounts specified in subparagraph (A) (i), (ii) and
15 (iii) under the conditions specified in this Act without
16 seeking higher approval within the Administration.

17 “(D) The Administration may transfer no more
18 than 15 per centum of each of the total levels for
19 direct loan programs as authorized in section 20 of this
20 Act: *Provided, however,* That no loan program level
21 authorized in such section may be increased more than
22 25 per centum by any such transfers: *Provided further,*
23 That the Administrator is not authorized to transfer
24 direct loan levels to deferred participation (guaranteed)
25 loan levels and that any transfers shall be effective

11

1 only to the extent approved in advance by the Appro-
 2 priations Committees of the United States Senate and
 3 of the House of Representatives of the United States.

4 “(E) For purposes of this paragraph the term
 5 ‘non-Federal sources’ shall include, but not be limited
 6 to, State and local government funds (including the
 7 proceeds from tax exempt obligations of such govern-
 8 ments), and funds derived from private financial institu-
 9 tions or private equity sources. In no event shall such
 10 term include funds derived directly from any grant or
 11 loan made, guaranteed or insured by the Federal Gov-
 12 ernment.”.

13 SEC. 12. ~~Section 10 of the Small Business Act is~~
 14 ~~amended by striking subsections (2), (c), and (d) and inserting~~
 15 ~~in lieu thereof the following:~~

16 “(d) ~~The purpose of this section priority shall be given~~
 17 ~~to the awarding of contracts and the placement of subcon-~~
 18 ~~tracts to small business concerns which shall perform a sub-~~
 19 ~~stantial proportion of the production on these contracts and~~
 20 ~~subcontracts which are concentrated in employment or~~
 21 underemployment or within labor surplus areas. Notwith-
 22 standing any other provision of law, total labor surplus area
 23 set asides pursuant to Defense Manpower Policy Number 4B
 24 (32A CFR Chapter 1) or any successor policy shall be au-
 25 thorized if the head of the procuring Federal agency or his

1 designee specifically determines that there is a reasonable ex-
2 pectation that offers will be obtained from a sufficient number
3 of eligible concerns so that awards will be made at reasonable
4 prices. As soon as practicable and to the extent possible, in
5 determining labor surplus areas, consideration shall be given
6 to those persons who would be available for employment
7 were suitable employment available. Until such definition re-
8 flects such number, the present criteria of such policy shall
9 govern.

10 ~~“(e) In carrying out small business set-aside programs,~~
11 ~~Federal agencies shall award contracts, and encourage the~~
12 ~~placement of subcontracts for procurement to the following in~~
13 ~~the manner and in the order stated:”~~

14 “(1) concerns which are small business concerns
15 and which are located in labor surplus areas, on the
16 basis of a total small business-labor surplus area set-
17 aside;

18 “(2) concerns which are small business concerns,
19 on the basis of a total small business set-aside;

20 “(3) concerns which are small business concerns
21 and which are located in a labor surplus area, on the
22 basis of a partial small business-labor surplus area set-
23 aside; and

24 “(4) concerns which are small business concerns,
25 on the basis of a partial small business set-aside.

1 “(f) After priority is given to the small business concerns
 2 specified in subsection (e), priority also shall be given to the
 3 awarding of contracts and the placement of subcontracts, on
 4 the basis of a total labor surplus area set aside, to business
 5 concerns which will perform a substantial proportion of the
 6 production on those contracts and subcontracts within areas
 7 of concentrated unemployment or underemployment or within
 8 labor surplus areas.”.

9 SEC. 13. ~~Section 13 of the Small Business Act is~~

10 ~~amended~~

11 (a) by redesignating clauses (1) through (10) as
 12 clauses (A) through (J), respectively;

13 (b) by inserting “(1)” after “(e)”; and

14 (c) by adding at the end thereof the following:

15 “(B) ~~the~~ publication of a ~~notice~~ of procurement
 16 actions ~~by~~ by paragraph (1) of this subsection, ~~the~~
 17 ~~the~~ establishment, or agency responsible for the pro-
 18 curement (A) ~~the~~ for the procurement
 19 ~~the~~ from the date of
 20 publication of the notice pursuant to such paragraph; and (B)
 21 shall foreclose competition under a procurement action only
 22 after thirty days have elapsed from the date of issuance of the
 23 solicitation, or, in the case of orders under a basic agreement,
 24 basic ordering agreement, or similar arrangement, the date of

1 publication of a notice of intent to place the order pursuant to
2 such paragraph.”.

3 SEC. 14. Section 3(h) of the Small Business Act is
4 amended as follows:

5 (a) by striking “availability of credit” and by in-
6 serting “availability of sufficient credit”; and

7 (b) by striking “conditions” and by inserting “con-
8 ditions and at reasonable rates,”.

9 SEC. 15. Section 3 of the Small Business Act is amend-
10 ed by striking from subsection (a) “Provided, That the Ad-
11 ministration shall not promulgate, amend, or rescind any rule
12 or regulation with respect to size standards prior to March
13 31, 1981.” and inserting in lieu thereof the following: “*Pro-*
14 *vided*, That notwithstanding the waiver provisions of any
15 other law, the Administration shall not promulgate, amend or
16 rescind any rule or regulation with respect to size standards
17 except in accordance with the procedures of chapter 5 of title
18 5, United States Code.”.

19 SEC. 16. Section 302(a) of the Small Business Invest-
20 ment Act of 1958 is amended by adding at the end thereof
21 the following: “With respect to a company licensed pursuant
22 to section 301(d), such capital and surplus shall include funds
23 obtained directly or indirectly from an agency or department
24 of a State government or the Federal Government (excluding

15

1 the Administration) for purposes of section 303 leveraging,
2 provided that such funds:

3 “(1) are not taken into account with respect to
4 meeting the requirements established by the preceding
5 two sentences; and

6 “(2) were invested in or were legally committed
7 to be invested in such company prior to July 29,
8 1980.”.

9 SEC. 17. Section 502 of the Small Business Investment
10 Act of 1958 is amended by striking “plant acquisition,” and
11 by inserting in lieu thereof “working capital, plant acqui-
12 tion,”.

13 SEC. 18. Section 503 of the Small Business Investment
14 Act of 1958 is amended by striking all of paragraph (5) of
15 subsection (b) after “is made” and by inserting the following:
16 “: *Provided*, That the Administration shall not use the source
17 or nature of the funds constituting the remaining percentum
18 of the project cost as a criteria to approve or reject such
19 guarantee; and”.

20 SEC. 19. This Act shall take effect October 1, 1983:
21 Provided, That the amendments made by sections 9(d) and
22 15 shall not apply to any disaster which commenced on or
23 before July 2, 1980.

○